(16)

Office - Supreme Court, U. S.
FILED
SEP 22 1944
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 437

G. A. ROSCHEK,

Petitioner,

vs.

STELLA E. WILLIAMSON,

Respondent.

OPPOSING BRIEF OF RESPONDENT.

SHEPARD J. CRUMPACKER,
Counsel for Respondent.

LOUIS M. HAMMERSCHMIDT,
MILTON A. JOHNSON,
Of Counsel for
Stella E. Williamson,
Respondent.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

INDEX.

PAGE

Statement of the case 1

Jurisdictional statement 3

Argument:

I. The decision of the Circuit Court of Appeals as a matter of law is correct 4

II. The ultimate facts disclose that the plaintiff was not entitled to recover 5

Conclusion 7

Table of Cases Cited.

Baird v. Smith, 7 Cal. App. (2nd) 597, 46 Pac. (2nd) 830 7

City of LaPorte v. Organ, 5 Ind. App. 369, 32 N. E. 342 6

F. C. A., Title 12, Sec. 64a 3

In re Smith's Estate, 282 Mich. 566, 276 S. W. 554 5

Keyser v. Hitz, 133 U. S. 138, 33 L. Ed. 531 4

Pottorff v. Dean, 77 F. (2nd) 893 6

48 Stat. 189 3

49 Stat. 708 3

R. H. Stearns Co. v. U. S., 291 M. S. 54, 78 L. Ed. 647 .. 7

Williams v. Vreeland, 250 U. S. 295, 63 L. Ed. 989 (Affirming 244 Fed. 346) 3, 5, 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 437.

G. A. ROSCHEK,

Petitioner,

vs.

STELLA E. WILLIAMSON,

Respondent.

OPPOSING BRIEF OF RESPONDENT.

I.

STATEMENT OF THE CASE.

The petitioner in his concise statement of the record, has referred to the statement contained in the Petition for Certiorari, under I, entitled "Summary Statement of the Matter Involved" but the petitioner has overlooked the following facts disclosed by the record:

1. Mrs. Williamson, the respondent, testified she did not recall receiving the dividend check dated December 31, 1930 (R. p. 30).

2. The petitioner has failed to set forth a copy of the receipt and settlement executed by the Receiver of the New Albany National Bank (R. p. 18) a copy of which receipt is marked Defendant's Exhibit A, and is in the words and figures following (R. p. 68):

Defendant's Exhibit A.

STATE OF INDIANA, }
ST. JOSEPH COUNTY. } SS.

IN THE ST. JOSEPH CIRCUIT COURT.

In the Matter of the Estate of Arthur Butler Williamson, Deceased.

RECEIPT OF FULL AND FINAL DISTRIBUTIVE SHARE IN THE SETTLEMENT OF SAID ESTATE AS INSOLVENT.

The undersigned, the duly appointed and presently acting receiver of the New Albany National Bank, hereby acknowledges receipt of the sum of Three Hundred Nine and 64/100 Dollars ($309.64) being 21.729% of the surplus distributable to the general creditors of the estate of Arthur B. Williamson, also known as Arthur Butler Williamson, which estate, under the order of the St. Joseph Circuit Court, is being settled as an insolvent estate, and the aforesaid amount is received in full settlement of the claim filed by the receiver against said estate on an assessment of Fourteen Hundred Twenty-five Dollars ($1425.00).

Dated at New Albany, Indiana, this 25th day of January, 1937.

CHARLES DAVIDSON,
Charles Davidson,
Receiver, New Albany National Bank.

II.

JURISDICTIONAL STATEMENT.

The jurisdictional statement made by the petitioner under Clause 3 thereof, states, in substance, that the question presented is substantial and that if the decision is permitted to stand "confusion and uncertainty will result in the application of controlling concepts in respect of superadded liability of stockholders in national banking associations."

We submit that liability has now ceased, except only in a very few banking institutions which have not given notice pursuant to Title 12, Sec. 64a, F. C. A., being an act of June 16, 1933, C. 89, Sec. 22; 48 Stat. 189; Aug. 23, 1935, C. 614, Tit. III, Sec. 304; 49 Stat. 708.

This case likewise is controlled by the case of *Williams* v. *Vreeland*, 250 U. S. 295, 63 L. Ed. 989, which holds, in substance, that the question involved in this case as to respondent's liability is a question of fact to be determined by a jury.

ARGUMENT.

POINT I.

The Decision of the Circuit Court of Appeals as a Matter of Law Is Correct.

Petitioner relies entirely in this case upon the authority of *Keyser* v. *Hitz*, 133 U. S. 138. The argument of petitioner, however, fully distinguishes the case at bar from the case cited. In the case before this Court the respondent, Mrs. Williamson, never had any knowledge that the stock in question stood in her name on the books of the bank. Even the receiver and his successor, with the stock records in their possession, determined she was not the owner, but that the deceased, Arthur B. Williamson, was the owner. The checks allegedly cashed did not disclose, upon their fact, as in the case cited, that they were dividend checks on stock standing in respondent's name.

The language of the opinion cited by the petitioner does not bear out the theory advanced. On page 12 of petitioner's brief the first words of the quotation from *Keyser* v. *Hitz* clearly show the fallacy of petitioner—"*If she became aware of the transfers, after they were made*, and thereafter received the dividends * * *." Petitioner has pointed to no evidence that Mrs. Williamson, the respondent, ever became aware of the transfers. The record is to the contrary.

Petitioner seeks to give a much broader meaning to the decision of *Keyser* v. *Hitz*, 113 U. S. 138, 10 S. Ct. 290, 33 L. Ed. 531, than is warranted by the language of that opinion. The petitioner states in substance that the case

holds that the person against whom liability is asserted must have knowledge or information *or a patent opportunity for knowledge* that bank stock stood in the name of such person. The Supreme Court in that case clearly stated: "If she becomes aware of the transfers, after they were made, and thereafter received the dividends she became a shareholder."

There is not a word in the case as to a patent opportunity for knowledge. There is not a word in the evidence in the case at bar that Mrs. Williamson ever became aware of the purported transfers after they were made.

This case is controlled by the case of *Williams* v. *Freeland*, 250 U. S. 295, 63 L. Ed. 989, which holds that the question of whether or not a person "dealt with the stock in a manner which would have furnished her this knowledge, *were issues of fact properly left to the jury.*"

Point II.

The Ultimate Facts Disclose That the Plaintiff Was Not Entitled to Recover.

Petitioner's Point II depends entirely upon the hypothesis that his argument under Point I is well founded. We submit it is not and therefore there is no basis for a consideration of this point.

The case of *In re Smith's Estate*, 282 Mich. 566, 276 N. W. 554, cited by petitioner, is not in point. The stock was there owned jointly by husband and wife. On the death of the husband the widow attempted to vote the stock and otherwise exercise the rights of ownership. Such are not the facts in this case. In the case at bar there is not even a scintilla of evidence that the respondent ever even knew that this stock had been transferred to her name.

Counsel also overlooked the fact that the Circuit Court of Appeals stated in its opinion that plaintiff's theory was that the attempt to hold the respondent liable was based upon her actual ownership of the stock.

Petitioner also fails to point out that the receiver gave a receipt and release of this obligation to the administratrix of the estate of Arthur B. Williamson covering the same stock which the receiver and his successor had already determined was the property of that estate. This receipt and release is set out in full in our statement of the case. This release was given after the receiver of the defunct bank had filed his claim in the estate proceedings in the state court and it had been allowed (R. p. 17).

The allowance or rejection of a claim against an estate operates as an adjudication and is binding on claimant.

City of LaPorte v. *Organ*, 5 Ind. App. 369, 32 N. E. 342.

Where a receiver has made his election to hold the trustee of an estate on the ground of a bona fide transfer, he would not be permitted to recover from the settlor of the trust on the theory that there was no valid transfer.

Pottorff v. *Dean*, 77 Fed. (2d) 893, 896.

The theory of the case at bar as shown by the complaint is that the defendant here was the record owner of 14¼ shares of stock (R. p. 2, Clause 5). The theory of the claim likewise is that Arthur B. Williamson was the record owner of the same 14¼ shares of stock (R. pp. 70, 71). The allowance of the claim establishes that Arthur B. Williamson, or the estate of Arthur B. Williamson, was the owner of this stock, and we respectfully submit that under the cases cited the plaintiff was not entitled to recover by this showing.

Likewise the receipt and release of the receiver is a complete bar.

Receivers have the right to effectuate settlements of assessment liabilities against owners of bank stock. 12 U. S. C. A. 67. This was done in this case (R. p. 68).

In the case of *R. H. Stearns Co.* v. *United States*, 291 U. S. 54, 63, 78 L. Ed. 647, 655, the Supreme Court held *"Acts done by a public official which presuppose the existence of other acts to make them legally operative are presumptive proofs of the latter"*.

In the case of *Baird* v. *Smith*, 7 Cal. App. (2nd) 597, 46 Pac. (2nd) 830, 831, the court stated:

> "It will not be presumed that the receiver, a public officer, exceeded his authority and that he compromised the claim of the bank against defendant wrongfully, or in violation of his legal duties. It will be presumed, therefore, that defendant's debt to the bank was one which the receiver could rightfully settle without exacting payment in money."

There is no evidence in the record that any statutory requirement was omitted.

Conclusion.

We respectfully submit the Petition for Certiorari should be denied for each of the following reasons:

1. There is no substantial question involved.

2. The case of *Williams* v. *Vreeland*, 250 U. S. 295, fully substantiates the action of the trial court and the Circuit Court of Appeals of the Seventh Circuit.

3. The opinion of the Circuit Court of Appeals is in no way contrary to or out of harmony with any ruling precedent or any principle of law declared by this Court or any other Circuit Court of Appeals.

We respectfully submit that the petition should be denied.

Respectfully submitted,

SHEPARD J. CRUMPACKER,
Attorney for Respondent.

LOUIS M. HAMMERSCHMIDT,
MILTON A. JOHNSON,
Of Counsel.